

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**MICROBIX BIOSYSTEMS, INC.,**

**Plaintiff,**

**vs.**

**NOVARTIS VACCINES AND  
DIAGNOSTICS, INC.,**

**Defendant.**

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**Civil No. 6:14-cv-00003-JDL**

**FINAL JUDGMENT**

Based upon this Court's construction of the term "total salt concentration therein" in United States Patent No. 7,270,990 (the "'990 patent") and pursuant to the Order dated February 17, 2015, Plaintiff Microbix Biosystems, Inc. ("Microbix") filed a Motion for an Entry of Judgment of Non-Infringement with Dismissal or Stay of Defendant's Counterclaims (Doc. No. 94). Defendant Novartis Vaccines and Diagnostics, Inc. ("Novartis") responded to the motion and consented to entry of judgment of non-infringement of the claims of the '990 patent with prejudice (Doc. No. 98 at 1). As such, Microbix's Motion for an Entry of Judgment of Non-Infringement (Doc. No. 94) is **GRANTED**. Accordingly, the Court enters judgment as follows:

Judgment is entered against Plaintiff and for Defendant as to Plaintiff's claims that the Accused Processes (Novartis Vaccines & Diagnostics, Inc.'s processes for making flu vaccines AgriFlu and Flurivin as set out in Microbix's Motion for Judgment of Non-infringement) infringe the Asserted Claims (claims 1, 3, 6-12, 15, 18, 37 and 39) of U.S. Patent No. 7,270,990, subject to the parties' right to appeal.

Subject to the parties' right to appeal, the Court further enters judgment for Defendant and against Plaintiffs on Defendant's counterclaim seeking declaratory judgment of non-

infringement and Defendant's affirmative defense of non-infringement, and declares that the Accused Processes do not infringe the Asserted Claims. Plaintiff Microbix shall take nothing from Defendants with respect to the asserted claims of the '990 Patent.

It is further **ORDERED** that the counterclaim by Defendant Novartis Vaccines and Diagnostics, Inc. for a declaratory judgment that the claims of U.S. Patent No. 7,270,990 are invalid is **DISMISSED WITHOUT PREJUDICE**.

All other claims, counterclaims, defenses, or other matters which have been asserted are dismissed without prejudice.

All pending motions are denied.

It is further **ORDERED** that the costs of courts of Defendant Novartis Vaccines and Diagnostics, Inc., the prevailing party, should be taxed against Plaintiff Microbix Biosystems, Inc. The parties are directed to the Court's Standing Order Regarding Bill of Costs on the Court's website.

**So ORDERED and SIGNED this 14th day of May, 2015.**

  
JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE